

(2) *Fraud issues.* The General Counsel shall designate an anti-fraud officer who shall—

(i) Serve as a point of contact relating to concerns about possible fraud upon EOIR, particularly with respect to matters relating to fraudulent applications or documents affecting multiple removal proceedings, applications for relief from removal, appeals, or other proceedings before EOIR;

(ii) Coordinate with investigative authorities of the Department of Homeland Security, the Department of Justice, and other appropriate agencies with respect to the identification of and response to such fraud; and

(iii) Notify the EOIR disciplinary counsel and other appropriate authorities with respect to instances of fraud, misrepresentation, or abuse pertaining to an attorney or accredited representative.

(f) *Citizenship Requirement for Employment.* (1) An application to work at EOIR, either as an employee or a volunteer, must include a signed affirmation from the applicant that he or she is a citizen of the United States of America. If requested, the applicant must document United States citizenship.

(2) The Director of EOIR may, by explicit written determination and to the extent permitted by law, authorize the appointment of an alien to an EOIR position when necessary to accomplish the work of EOIR.

[72 FR 53676, Sept. 20, 2007]

Subpart A—Board of Immigration Appeals

§ 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

(a)(1) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, subject to the general supervision of the Director, Executive Office for Immigration Review (EOIR). The Board members shall be attorneys appointed by the Attorney General to act as the Attorney General's delegates in the cases that come before them. The Board shall consist of 15 members. A vacancy, or the absence or unavailability of a Board member, shall not impair the right of the re-

maining members to exercise all the powers of the Board.

(2) *Chairman.* The Attorney General shall designate one of the Board members to serve as Chairman. The Attorney General may designate one or two Vice Chairmen to assist the Chairman in the performance of his duties and to exercise all of the powers and duties of the Chairman in the absence or unavailability of the Chairman.

(i) The Chairman, subject to the supervision of the Director, shall direct, supervise, and establish internal operating procedures and policies of the Board. The Chairman shall have authority to:

(A) Issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(B) Provide for appropriate training of Board members and staff on the conduct of their powers and duties;

(C) Direct the conduct of all employees assigned to the Board to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases; to direct that the adjudication of certain cases be deferred, to regulate the assignment of Board members to cases, and otherwise to manage the docket of matters to be decided by the Board;

(D) Evaluate the performance of the Board by making appropriate reports and inspections, and take corrective action where needed;

(E) Adjudicate cases as a Board member; and

(F) Exercise such other authorities as the Director may provide.

(ii) The Chairman shall have no authority to direct the result of an adjudication assigned to another Board member or to a panel; provided, however, that nothing in this section shall be construed to limit the management authority of the Chairman under paragraph (a)(2)(i) of this section.

(3) *Panels.* The Chairman shall divide the Board into three-member panels and designate a presiding member of each panel if the Chairman or Vice Chairman is not assigned to the panel. The Chairman may from time to time make changes in the composition of

such panels and of presiding members. Each three-member panel shall be empowered to decide cases by majority vote, and a majority of the Board members assigned to the panel shall constitute a quorum for such panel. In addition, the Chairman shall assign any number of Board members, as needed, to serve on the screening panel to implement the case management process as provided in paragraph (e) of this section.

(4) *Temporary Board members.* The Director may in his discretion designate immigration judges, retired Board members, retired immigration judges, and administrative law judges employed within, or retired from, EOIR to act as temporary Board members for terms not to exceed six months. In addition, with the approval of the Deputy Attorney General, the Director may designate one or more senior EOIR attorneys with at least ten years of experience in the field of immigration law to act as temporary Board members for terms not to exceed six months. A temporary Board member shall have the authority of a Board member to adjudicate assigned cases, except that temporary Board members shall not have the authority to vote on any matter decided by the Board *en banc*.

(5) *En banc process.* A majority of the permanent Board members shall constitute a quorum for purposes of convening the Board *en banc*. The Board may on its own motion by a majority vote of the permanent Board members, or by direction of the Chairman, consider any case *en banc*, or reconsider as the Board *en banc* any case that has been considered or decided by a three-member panel. *En banc* proceedings are not favored, and shall ordinarily be ordered only where necessary to address an issue of particular importance or to secure or maintain consistency of the Board's decisions.

(6) *Board staff.* There shall also be attached to the Board such number of attorneys and other employees as the Deputy Attorney General, upon recommendation of the Director, shall from time to time direct.

(7) [Reserved]

(b) *Appellate jurisdiction.* Appeals may be filed with the Board of Immigration Appeals from the following:

(1) Decisions of Immigration Judges in exclusion cases, as provided in 8 CFR part 240, subpart D.

(2) Decisions of Immigration Judges in deportation cases, as provided in 8 CFR part 1240, subpart E, except that no appeal shall lie seeking review of a length of a period of voluntary departure granted by an Immigration Judge under section 244E of the Act as it existed prior to April 1, 1997.

(3) Decisions of Immigration Judges in removal proceedings, as provided in 8 CFR part 1240, except that no appeal shall lie seeking review of the length of a period of voluntary departure granted by an immigration judge under section 240B of the Act or part 240 of this chapter.

(4) Decisions involving administrative fines and penalties, including mitigation thereof, as provided in part 280 of this chapter.

(5) Decisions on petitions filed in accordance with section 204 of the act (except petitions to accord preference classifications under section 203(a)(3) or section 203(a)(6) of the act, or a petition on behalf of a child described in section 101(b)(1)(F) of the act), and decisions on requests for revalidation and decisions revoking the approval of such petitions, in accordance with section 205 of the act, as provided in parts 204 and 205, respectively, of 8 CFR chapter I or parts 1204 and 1205, respectively, of this chapter.

(6) Decisions on applications for the exercise of the discretionary authority contained in section 212(d)(3) of the act as provided in part 1212 of this chapter.

(7) Determinations relating to bond, parole, or detention of an alien as provided in 8 CFR part 1236, subpart A.

(8) Decisions of Immigration Judges in rescission of adjustment of status cases, as provided in part 1246 of this chapter.

(9) Decisions of Immigration Judges in asylum proceedings pursuant to § 1208.2(b) of this chapter.

(10) Decisions of Immigration Judges relating to Temporary Protected Status as provided in 8 CFR part 1244.

(11) Decisions on applications from organizations or attorneys requesting to be included on a list of free legal services providers and decisions on removals therefrom pursuant to § 1003.65.

(12) Decisions of Immigration Judges on applications for adjustment of status referred on a Notice of Certification (Form I-290C) to the Immigration Court in accordance with §§ 1245.13(n)(2) and 1245.15(n)(3) of this chapter or remanded to the Immigration Court in accordance with §§ 1245.13(d)(2) and 1245.15(e)(2) of this chapter.

(13) Decisions of adjudicating officials in practitioner disciplinary proceedings as provided in subpart G of this part.

(14) Decisions of immigration judges regarding custody of aliens subject to a final order of removal made pursuant to § 1241.14 of this chapter.

(c) *Jurisdiction by certification.* The Commissioner, or any other duly authorized officer of the Service, any Immigration Judge, or the Board may in any case arising under paragraph (b) of this section certify such case to the Board. The Board in its discretion may review any such case by certification without regard to the provisions of § 1003.7 if it determines that the parties have already been given a fair opportunity to make representations before the Board regarding the case, including the opportunity request oral argument and to submit a brief.

(d) *Powers of the Board—(1) Generally.* The Board shall function as an appellate body charged with the review of those administrative adjudications under the Act that the Attorney General may by regulation assign to it. The Board shall resolve the questions before it in a manner that is timely, impartial, and consistent with the Act and regulations. In addition, the Board, through precedent decisions, shall provide clear and uniform guidance to the Service, the immigration judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations.

(i) The Board shall be governed by the provisions and limitations prescribed by applicable law, regulations, and procedures, and by decisions of the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to section 103 of the Act).

(ii) Subject to these governing standards, Board members shall exercise

their independent judgment and discretion in considering and determining the cases coming before the Board, and a panel or Board member to whom a case is assigned may take any action consistent with their authorities under the Act and the regulations as is appropriate and necessary for the disposition of the case.

(2) *Summary dismissal of appeals—(i) Standards.* A single Board member or panel may summarily dismiss any appeal or portion of any appeal in any case in which:

(A) The party concerned fails to specify the reasons for the appeal on Form EOIR-26 or Form EOIR-29 (Notices of Appeal) or other document filed therewith;

(B) The only reason for the appeal specified by the party concerned involves a finding of fact or a conclusion of law that was conceded by that party at a prior proceeding;

(C) The appeal is from an order that granted the party concerned the relief that had been requested;

(D) The Board is satisfied, from a review of the record, that the appeal is filed for an improper purpose, such as to cause unnecessary delay, or that the appeal lacks an arguable basis in fact or in law unless the Board determines that it is supported by a good faith argument for extension, modification, or reversal of existing law;

(E) The party concerned indicates on Form EOIR-26 or Form EOIR-29 that he or she will file a brief or statement in support of the appeal and, thereafter, does not file such brief or statement, or reasonably explain his or her failure to do so, within the time set for filing;

(F) The appeal does not fall within the Board's jurisdiction, or lies with the Immigration Judge rather than the Board;

(G) The appeal is untimely, or barred by an affirmative waiver of the right of appeal that is clear on the record; or

(H) The appeal fails to meet essential statutory or regulatory requirements or is expressly excluded by statute or regulation.

(ii) *Action by the Board.* The Board's case management screening plan shall promptly identify cases that are subject to summary dismissal pursuant to

this paragraph. An order dismissing any appeal pursuant to this paragraph (d)(2) shall constitute the final decision of the Board.

(iii) *Disciplinary consequences.* The filing by an attorney or representative accredited under § 1292.2(d) of this chapter of an appeal that is summarily dismissed under paragraph (d)(2)(i) of this section may constitute frivolous behavior under § 1003.102(j). Summary dismissal of an appeal under paragraph (d)(2)(i) of this section does not limit the other grounds and procedures for disciplinary action against attorneys or representatives.

(3) *Scope of review.* (i) The Board will not engage in *de novo* review of findings of fact determined by an immigration judge. Facts determined by the immigration judge, including findings as to the credibility of testimony, shall be reviewed only to determine whether the findings of the immigration judge are clearly erroneous.

(ii) The Board may review questions of law, discretion, and judgment and all other issues in appeals from decisions of immigration judges *de novo*.

(iii) The Board may review all questions arising in appeals from decisions issued by Service officers *de novo*.

(iv) Except for taking administrative notice of commonly known facts such as current events or the contents of official documents, the Board will not engage in factfinding in the course of deciding appeals. A party asserting that the Board cannot properly resolve an appeal without further factfinding must file a motion for remand. If further factfinding is needed in a particular case, the Board may remand the proceeding to the immigration judge or, as appropriate, to the Service.

(4) *Rules of practice.* The Board shall have authority, with the approval of the Director, EOIR, to prescribe procedures governing proceedings before it.

(5) *Discipline of attorneys and representatives.* The Board shall determine whether any organization or individual desiring to represent aliens in immigration proceedings meets the requirements as set forth in § 1292.2 of this chapter. It shall also determine whether any organization desiring representation is of a kind described in § 1.1(j) of this chapter, and shall regulate the

conduct of attorneys, representatives of organizations, and others who appear in a representative capacity before the Board or the Service or any immigration judge.

(6) *Identity, law enforcement, or security investigations or examinations.* (i) The Board shall not issue a decision affirming or granting to an alien an immigration status, relief or protection from removal, or other immigration benefit, as provided in 8 CFR 1003.47(b), that requires completion of identity, law enforcement, or security investigations or examinations if:

(A) Identity, law enforcement, or security investigations or examinations have not been completed during the proceedings;

(B) DHS reports to the Board that the results of prior identity, law enforcement, or security investigations or examinations are no longer current under the standards established by DHS and must be updated; or

(C) Identity, law enforcement, or security investigations or examinations have uncovered new information bearing on the merits of the alien's application for relief.

(ii) Except as provided in paragraph (d)(6)(iv) of this section, if identity, law enforcement, or security investigations or examinations have not been completed or DHS reports that the results of prior investigations or examinations are no longer current under the standards established by DHS, then the Board will determine the best means to facilitate the final disposition of the case, as follows:

(A) The Board may issue an order remanding the case to the immigration judge with instructions to allow DHS to complete or update the appropriate identity, law enforcement, or security investigations or examinations pursuant to § 1003.47; or

(B) The Board may provide notice to both parties that in order to complete adjudication of the appeal the case is being placed on hold until such time as all identity, law enforcement, or security investigations or examinations are completed or updated and the results have been reported to the Board.

(iii) In any case placed on hold under paragraph (d)(6)(ii)(B) of this section,

DHS shall report to the Board promptly when the identity, law enforcement, or security investigations or examinations have been completed or updated. If DHS obtains relevant information as a result of the identity, law enforcement, or security investigations or examinations, or if the applicant fails to comply with necessary procedures for collecting biometrics or other biographical information, DHS may move to remand the record to the immigration judge for consideration of whether, in view of the new information or the alien's failure to comply, the immigration relief should be denied, either on grounds of eligibility or, where applicable, as a matter of discretion.

(iv) The Board is not required to remand or hold a case pursuant to paragraph (d)(6)(ii) of this paragraph if the Board decides to dismiss the respondent's appeal or deny the relief sought.

(v) The immigration relief described in 8 CFR 1003.47(b) and granted by the Board shall take effect as provided in 8 CFR 1003.47(i).

(7) *Finality of decision.* The decision of the Board shall be final except in those cases reviewed by the Attorney General in accordance with paragraph (h) of this section. The Board may return a case to the Service or an immigration judge for such further action as may be appropriate, without entering a final decision on the merits of the case.

(e) *Case management system.* The Chairman shall establish a case management system to screen all cases and to manage the Board's caseload. Unless a case meets the standards for assignment to a three-member panel under paragraph (e)(6) of this section, all cases shall be assigned to a single Board member for disposition. The Chairman, under the supervision of the Director, shall be responsible for the success of the case management system. The Chairman shall designate, from time to time, a screening panel comprising a sufficient number of Board members who are authorized, acting alone, to adjudicate appeals as provided in this paragraph.

(1) *Initial screening.* All cases shall be referred to the screening panel for review. Appeals subject to summary dismissal as provided in paragraph (d)(2)

of this section should be promptly dismissed.

(2) *Miscellaneous dispositions.* A single Board member may grant an unopposed motion or a motion to withdraw an appeal pending before the Board. In addition, a single Board member may adjudicate a Service motion to remand any appeal from the decision of a Service officer where the Service requests that the matter be remanded to the Service for further consideration of the appellant's arguments or evidence raised on appeal; a case where remand is required because of a defective or missing transcript; and other procedural or ministerial issues as provided by the case management plan.

(3) *Merits review.* In any case that has not been summarily dismissed, the case management system shall arrange for the prompt completion of the record of proceedings and transcript, and the issuance of a briefing schedule. A single Board member assigned under the case management system shall determine the appeal on the merits as provided in paragraph (e)(4) or (e)(5) of this section, unless the Board member determines that the case is appropriate for review and decision by a three-member panel under the standards of paragraph (e)(6) of this section. The Board member may summarily dismiss an appeal after completion of the record of proceeding.

(4) *Affirmance without opinion.* (i) The Board member to whom a case is assigned shall affirm the decision of the Service or the immigration judge, without opinion, if the Board member determines that the result reached in the decision under review was correct; that any errors in the decision under review were harmless or nonmaterial; and that

(A) The issues on appeal are squarely controlled by existing Board or federal court precedent and do not involve the application of precedent to a novel factual situation; or

(B) The factual and legal issues raised on appeal are not so substantial that the case warrants the issuance of a written opinion in the case.

(ii) If the Board member determines that the decision should be affirmed without opinion, the Board shall issue an order that reads as follows: "The

Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. *See* 8 CFR 3.1(e)(4).” An order affirming without opinion, issued under authority of this provision, shall not include further explanation or reasoning. Such an order approves the result reached in the decision below; it does not necessarily imply approval of all of the reasoning of that decision, but does signify the Board’s conclusion that any errors in the decision of the immigration judge or the Service were harmless or nonmaterial.

(5) *Other decisions on the merits by single Board member.* If the Board member to whom an appeal is assigned determines, upon consideration of the merits, that the decision is not appropriate for affirmance without opinion, the Board member shall issue a brief order affirming, modifying, or remanding the decision under review, unless the Board member designates the case for decision by a three-member panel under paragraph (e)(6) of this section under the standards of the case management plan. A single Board member may reverse the decision under review if such reversal is plainly consistent with and required by intervening Board or judicial precedent, by an intervening Act of Congress, or by an intervening final regulation. A motion to reconsider or to reopen a decision that was rendered by a single Board member may be adjudicated by that Board member unless the case is reassigned to a three-member panel as provided under the standards of the case management plan.

(6) *Panel decisions.* Cases may only be assigned for review by a three-member panel if the case presents one of these circumstances:

- (i) The need to settle inconsistencies among the rulings of different immigration judges;
- (ii) The need to establish a precedent construing the meaning of laws, regulations, or procedures;
- (iii) The need to review a decision by an immigration judge or the Service that is not in conformity with the law or with applicable precedents;
- (iv) The need to resolve a case or controversy of major national import;

(v) The need to review a clearly erroneous factual determination by an immigration judge; or

(vi) The need to reverse the decision of an immigration judge or the Service, other than a reversal under § 1003.1(e)(5).

(7) *Oral argument.* When an appeal has been taken, a request for oral argument if desired shall be included in the Notice of Appeal. A three-member panel or the Board *en banc* may hear oral argument, as a matter of discretion, at such date and time as is established under the Board’s case management plan. Oral argument shall be held at the offices of the Board unless the Deputy Attorney General or his designee authorizes oral argument to be held elsewhere. The Service may be represented before the Board by an officer of the Service designated by the Service. No oral argument will be allowed in a case that is assigned for disposition by a single Board member.

(8) *Timeliness.* As provided under the case management system, the Board shall promptly enter orders of summary dismissal, or other miscellaneous dispositions, in appropriate cases. In other cases, after completion of the record on appeal, including any briefs, motions, or other submissions on appeal, the Board member or panel to which the case is assigned shall issue a decision on the merits as soon as practicable, with a priority for cases or custody appeals involving detained aliens.

(i) Except in exigent circumstances as determined by the Chairman, or as provided in paragraph (d)(6) of this section, the Board shall dispose of all appeals assigned to a single Board member within 90 days of completion of the record on appeal, or within 180 days after an appeal is assigned to a three-member panel (including any additional opinion by a member of the panel).

(ii) In exigent circumstances, the Chairman may grant an extension in particular cases of up to 60 days as a matter of discretion. Except as provided in paragraph (e)(8)(iii) or (iv) of this section, in those cases where the panel is unable to issue a decision within the established time limits, as extended, the Chairman shall either assign the case to himself or a Vice-

Chairman for final decision within 14 days or shall refer the case to the Attorney General for decision. If a dissenting or concurring panel member fails to complete his or her opinion by the end of the extension period, the decision of the majority will be issued without the separate opinion.

(iii) In rare circumstances, when an impending decision by the United States Supreme Court or a United States Court of Appeals, or impending Department regulatory amendments, or an impending *en banc* Board decision may substantially determine the outcome of a case or group of cases pending before the Board, the Chairman may hold the case or cases until such decision is rendered, temporarily suspending the time limits described in this paragraph (e)(8).

(iv) For any case ready for adjudication as of September 25, 2002, and that has not been completed within the established time lines, the Chairman may, as a matter of discretion, grant an extension of up to 120 days.

(v) The Chairman shall notify the Director of EOIR and the Attorney General if a Board member consistently fails to meet the assigned deadlines for the disposition of appeals, or otherwise fails to adhere to the standards of the case management system. The Chairman shall also prepare a report assessing the timeliness of the disposition of cases by each Board member on an annual basis.

(vi) The provisions of this paragraph (e)(8) establishing time limits for the adjudication of appeals reflect an internal management directive in favor of timely dispositions, but do not affect the validity of any decision issued by the Board and do not, and shall not be interpreted to, create any substantive or procedural rights enforceable before any immigration judge or the Board, or in any court of law or equity.

(f) *Service of Board decisions.* The decision of the Board shall be in writing and copies thereof shall be transmitted by the Board to the Service and a copy shall be served upon the alien or party affected as provided in part 292 of this chapter.

(g) *Decisions as precedents.* Except as Board decisions may be modified or overruled by the Board or the Attorney

General, decisions of the Board, and decisions of the Attorney General, shall be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States. By majority vote of the permanent Board members, selected decisions of the Board rendered by a three-member panel or by the Board *en banc* may be designated to serve as precedents in all proceedings involving the same issue or issues. Selected decisions designated by the Board, decisions of the Attorney General, and decisions of the Secretary of Homeland Security to the extent authorized in paragraph (i) of this section, shall serve as precedents in all proceedings involving the same issue or issues.

(h) *Referral of cases to the Attorney General.* (1) The Board shall refer to the Attorney General for review of its decision all cases that:

(i) The Attorney General directs the Board to refer to him.

(ii) The Chairman or a majority of the Board believes should be referred to the Attorney General for review.

(iii) The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, refers to the Attorney General for review.

(2) In any case the Attorney General decides, the Attorney General's decision shall be stated in writing and shall be transmitted to the Board or Secretary, as appropriate, for transmittal and service as provided in paragraph (f) of this section.

(i) *Publication of Secretary's precedent decisions.* The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and, upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be

published in the same manner as decisions of the Board and the Attorney General.

(j) *Continuation of jurisdiction and procedure.* The jurisdiction of, and procedures before, the Board of Immigration Appeals in exclusion, deportation, removal, rescission, asylum-only, and any other proceedings, shall remain in effect as in effect on February 28, 2003, until the regulations in this chapter are further modified by the Attorney General. Where a decision of an officer of the Immigration and Naturalization Service was, before March 1, 2003, appealable to the Board or to an immigration judge, or an application denied could be renewed in proceedings before an immigration judge, the same authority and procedures shall be followed until further modified by the Attorney General.

[23 FR 9117, Nov. 26, 1958. Redesignated at 68 FR 9830, Feb. 28, 2003]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1003.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 1003.2 Reopening or reconsideration before the Board of Immigration Appeals.

(a) *General.* The Board may at any time reopen or reconsider on its own motion any case in which it has rendered a decision. A request to reopen or reconsider any case in which a decision has been made by the Board, which request is made by the Service, or by the party affected by the decision, must be in the form of a written motion to the Board. The decision to grant or deny a motion to reopen or reconsider is within the discretion of the Board, subject to the restrictions of this section. The Board has discretion to deny a motion to reopen even if the party moving has made out a *prima facie* case for relief.

(b) *Motion to reconsider.* (1) A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the prior Board decision and shall be supported by pertinent authority. A motion to reconsider a decision rendered by an Immigration Judge or Service officer that is pending when an appeal is filed with the Board, or that is filed subsequent to the filing

with the Board of an appeal from the decision sought to be reconsidered, may be deemed a motion to remand the decision for further proceedings before the Immigration Judge or the Service officer from whose decision the appeal was taken. Such motion may be consolidated with, and considered by the Board in connection with the appeal to the Board.

(2) A motion to reconsider a decision must be filed with the Board within 30 days after the mailing of the Board decision or on or before July 31, 1996, whichever is later. A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider. In removal proceedings pursuant to section 240 of the Act, an alien may file only one motion to reconsider a decision that the alien is removable from the United States.

(3) A motion to reconsider based solely on an argument that the case should not have been affirmed without opinion by a single Board Member, or by a three-Member panel, is barred.

(c) *Motion to reopen.* (1) A motion to reopen proceedings shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits or other evidentiary material. A motion to reopen proceedings for the purpose of submitting an application for relief must be accompanied by the appropriate application for relief and all supporting documentation. A motion to reopen proceedings shall not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing; nor shall any motion to reopen for the purpose of affording the alien an opportunity to apply for any form of discretionary relief be granted if it appears that the alien's right to apply for such relief was fully explained to him or her and an opportunity to apply therefore was afforded at the former hearing, unless the relief is sought on the basis of circumstances that have arisen subsequent to the hearing. Subject to the other requirements and restrictions of this section, and notwithstanding the provisions in

§1001.1(p) of this chapter, a motion to reopen proceedings for consideration or further consideration of an application for relief under section 212(c) of the Act (8 U.S.C. 1182(c)) may be granted if the alien demonstrates that he or she was statutorily eligible for such relief prior to the entry of the administratively final order of deportation.

(2) Except as provided in paragraph (c)(3) of this section, a party may file only one motion to reopen deportation or exclusion proceedings (whether before the Board or the Immigration Judge) and that motion must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened, or on or before September 30, 1996, whichever is later. Except as provided in paragraph (c)(3) of this section, an alien may file only one motion to reopen removal proceedings (whether before the Board or the Immigration Judge) and that motion must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened.

(3) In removal proceedings pursuant to section 240 of the Act, the time limitation set forth in paragraph (c)(2) of this section shall not apply to a motion to reopen filed pursuant to the provisions of §1003.23(b)(4)(ii). The time and numerical limitations set forth in paragraph (c)(2) of this section shall not apply to a motion to reopen proceedings:

(i) Filed pursuant to the provisions of §1003.23(b)(4)(iii)(A)(1) or §1003.23(b)(4)(iii)(A)(2);

(ii) To apply or reapply for asylum or withholding of deportation based on changed circumstances arising in the country of nationality or in the country to which deportation has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous hearing;

(iii) Agreed upon by all parties and jointly filed. Notwithstanding such agreement, the parties may contest the issues in a reopened proceeding; or

(iv) Filed by the Service in exclusion or deportation proceedings when the basis of the motion is fraud in the original proceeding or a crime that

would support termination of asylum in accordance with §1208.22(f) of this chapter.

(4) A motion to reopen a decision rendered by an Immigration Judge or Service officer that is pending when an appeal is filed, or that is filed while an appeal is pending before the Board, may be deemed a motion to remand for further proceedings before the Immigration Judge or the Service officer from whose decision the appeal was taken. Such motion may be consolidated with, and considered by the Board in connection with, the appeal to the Board.

(d) *Departure, deportation, or removal.* A motion to reopen or a motion to reconsider shall not be made by or on behalf of a person who is the subject of exclusion, deportation, or removal proceedings subsequent to his or her departure from the United States. Any departure from the United States, including the deportation or removal of a person who is the subject of exclusion, deportation, or removal proceedings, occurring after the filing of a motion to reopen or a motion to reconsider, shall constitute a withdrawal of such motion.

(e) *Judicial proceedings.* Motions to reopen or reconsider shall state whether the validity of the exclusion, deportation, or removal order has been or is the subject of any judicial proceeding and, if so, the nature and date thereof, the court in which such proceeding took place or is pending, and its result or status. In any case in which an exclusion, deportation, or removal order is in effect, any motion to reopen or reconsider such order shall include a statement by or on behalf of the moving party declaring whether the subject of the order is also the subject of any pending criminal proceeding under the Act, and, if so, the current status of that proceeding. If a motion to reopen or reconsider seeks discretionary relief, the motion shall include a statement by or on behalf of the moving party declaring whether the alien for whose relief the motion is being filed is subject to any pending criminal prosecution and, if so, the nature and current status of that prosecution.

(f) *Stay of deportation.* Except where a motion is filed pursuant to the provisions of §§1003.23(b)(4)(ii) and 1003.23(b)(4)(iii)(A), the filing of a motion to reopen or a motion to reconsider shall not stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the Board, the Immigration Judge, or an authorized officer of the Service.

(g) *Filing procedures*—(1) *English language, entry of appearance, and proof of service requirements.* A motion and any submission made in conjunction with a motion must be in English or accompanied by a certified English translation. If the moving party, other than the Service, is represented, Form EOIR-27, Notice of Entry of Appearance as Attorney or Representative Before the Board, must be filed with the motion. In all cases, the motion shall include proof of service on the opposing party of the motion and all attachments. If the moving party is not the Service, service of the motion shall be made upon the Office of the District Counsel for the district in which the case was completed before the Immigration Judge.

(2) *Distribution of motion papers.* (i) A motion to reopen or motion to reconsider a decision of the Board pertaining to proceedings before an Immigration Judge shall be filed directly with the Board. Such motion must be accompanied by a check, money order, or fee waiver request in satisfaction of the fee requirements of §1003.8. The record of proceeding pertaining to such a motion shall be forwarded to the Board upon the request or order of the Board.

(ii) A motion to reopen or a motion to reconsider a decision of the Board pertaining to a matter initially adjudicated by an officer of the Service shall be filed with the officer of the Service having administrative control over the record of proceeding.

(iii) If the motion is made by the Service in proceedings in which the Service has administrative control over the record of proceedings, the record of proceedings in the case and the motion shall be filed directly with the Board. If such motion is filed directly with an office of the Service, the

entire record of proceeding shall be forwarded to the Board by the Service officer promptly upon receipt of the briefs of the parties, or upon expiration of the time allowed for the submission of such briefs.

(3) *Briefs and response.* The moving party may file a brief if it is included with the motion. If the motion is filed directly with the Board pursuant to paragraph (g)(2)(i) of this section, the opposing party shall have 13 days from the date of service of the motion to file a brief in opposition to the motion directly with the Board. If the motion is filed with an office of the Service pursuant to paragraph (g)(2)(ii) of this section, the opposing party shall have 13 days from the date of filing of the motion to file a brief in opposition to the motion directly with the office of the Service. In all cases, briefs and any other filings made in conjunction with a motion shall include proof of service on the opposing party. The Board, in its discretion, may extend the time within which such brief is to be submitted and may authorize the filing of a brief directly with the Board. A motion shall be deemed unopposed unless a timely response is made. The Board may, in its discretion, consider a brief filed out of time.

(h) *Oral argument.* A request for oral argument, if desired, shall be incorporated in the motion to reopen or reconsider. The Board, in its discretion, may grant or deny requests for oral argument.

(i) *Ruling on motion.* Rulings upon motions to reopen or motions to reconsider shall be by written order. Any motion for reconsideration or reopening of a decision issued by a single Board member will be referred to the screening panel for disposition by a single Board member, unless the screening panel member determines, in the exercise of judgment, that the motion for reconsideration or reopening should be assigned to a three-member panel under the standards of §1003.1(e)(6). If the order directs a reopening and further proceedings are necessary, the record shall be returned to the Immigration Court or the officer of the Service having administrative

control over the place where the reopened proceedings are to be conducted. If the motion to reconsider is granted, the decision upon such reconsideration shall affirm, modify, or reverse the original decision made in the case.

[61 FR 18904, Apr. 29, 1996; 61 FR 32924, June 26, 1996, as amended at 62 FR 10330, Mar. 6, 1997; 64 FR 56142, Oct. 18, 1999; 67 FR 54904, Aug. 26, 2002]

§ 1003.3 Notice of appeal.

(a) *Filing*—(1) *Appeal from decision of an immigration judge*. A party affected by a decision of an immigration judge which may be appealed to the Board under this chapter shall be given notice of the opportunity for filing an appeal. An appeal from a decision of an immigration judge shall be taken by filing a Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26) directly with the Board, within the time specified in § 1003.38. The appealing parties are only those parties who are covered by the decision of an immigration judge and who are specifically named on the Notice of Appeal. The appeal must reflect proof of service of a copy of the appeal and all attachments on the opposing party. An appeal is not properly filed unless it is received at the Board, along with all required documents, fees or fee waiver requests, and proof of service, within the time specified in the governing sections of this chapter. A Notice of Appeal may not be filed by any party who has waived appeal pursuant to § 1003.39.

(2) *Appeal from decision of a Service officer*. A party affected by a decision of a Service officer that may be appealed to the Board under this chapter shall be given notice of the opportunity to file an appeal. An appeal from a decision of a Service officer shall be taken by filing a Notice of Appeal to the Board of Immigration Appeals from a Decision of an INS Officer (Form EOIR-29) directly with the office of the Service having administrative control over the record of proceeding within 30 days of the service of the decision being appealed. An appeal is not properly filed until it is received at the appropriate office of the Service, together with all required documents,

and the fee provisions of § 1003.8 are satisfied.

(3) *General requirements for all appeals*. The appeal must be accompanied by a check, money order, or fee waiver request in satisfaction of the fee requirements of § 1003.8. If the respondent or applicant is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR-27) must be filed with the Notice of Appeal. The appeal and all attachments must be in English or accompanied by a certified English translation.

(b) *Statement of the basis of appeal*. The party taking the appeal must identify the reasons for the appeal in the Notice of Appeal (Form EOIR-26 or Form EOIR-29) or in any attachments thereto, in order to avoid summary dismissal pursuant to § 1003.1(d)(2)(i). The statement must specifically identify the findings of fact, the conclusions of law, or both, that are being challenged. If a question of law is presented, supporting authority must be cited. If the dispute is over the findings of fact, the specific facts contested must be identified. Where the appeal concerns discretionary relief, the appellant must state whether the alleged error relates to statutory grounds of eligibility or to the exercise of discretion and must identify the specific factual and legal finding or findings that are being challenged. The appellant must also indicate in the Notice of Appeal (Form EOIR-26 or Form EOIR-29) whether he or she desires oral argument before the Board and whether he or she will be filing a separate written brief or statement in support of the appeal. An appellant who asserts that the appeal may warrant review by a three-member panel under the standards of § 1003.1(e)(6) may identify in the Notice of Appeal the specific factual or legal basis for that contention.

(c) *Briefs*—(1) *Appeal from decision of an immigration judge*. Briefs in support of or in opposition to an appeal from a decision of an immigration judge shall be filed directly with the Board. In those cases that are transcribed, the briefing schedule shall be set by the Board after the transcript is available. In cases involving aliens in custody, the parties shall be provided 21 days in

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which to file simultaneous briefs unless a shorter period is specified by the Board, and reply briefs shall be permitted only by leave of the Board. In cases involving aliens who are not in custody, the appellant shall be provided 21 days in which to file a brief, unless a shorter period is specified by the Board. The appellee shall have the same period of time in which to file a reply brief that was initially granted to the appellant to file his or her brief. The time to file a reply brief commences from the date upon which the appellant's brief was due, as originally set or extended by the Board. The Board, upon written motion, may extend the period for filing a brief or a reply brief for up to 90 days for good cause shown. In its discretion, the Board may consider a brief that has been filed out of time. All briefs, filings, and motions filed in conjunction with an appeal shall include proof of service on the opposing party.

(2) *Appeal from decision of a Service officer.* Briefs in support of or in opposition to an appeal from a decision of a Service officer shall be filed directly with the office of the Service having administrative control over the file. The alien and the Service shall be provided 21 days in which to file a brief, unless a shorter period is specified by the Service officer from whose decision the appeal is taken, and reply briefs shall be permitted only by leave of the Board. Upon written request of the alien, the Service officer from whose decision the appeal is taken or the Board may extend the period for filing a brief for good cause shown. The Board may authorize the filing of briefs directly with the Board. In its discretion, the Board may consider a brief that has been filed out of time. All briefs and other documents filed in conjunction with an appeal, unless filed by an alien directly with a Service office, shall include proof of service on the opposing party.

(d) *Effect of certification.* The certification of a case, as provided in this part, shall not relieve the party affected from compliance with the provisions of this section in the event that he or she is entitled and desires to appeal from an initial decision, nor shall it serve to extend the time specified in

the applicable parts of this chapter for the taking of an appeal.

(e) *Effect of departure from the United States.* Departure from the United States of a person who is the subject of deportation proceedings, prior to the taking of an appeal from a decision in his or her case, shall constitute a waiver of his or her right to appeal.

(f) *Application on effective date.* All cases and motions pending on September 25, 2002, shall be adjudicated according to the rules in effect on or after that date, except that § 1003.1(d)(3)(i) shall not apply to appeals filed before September 25, 2002. A party to an appeal or motion pending on August 26, 2002, may, until September 25, 2002, or the expiration of any briefing schedule set by the Board, whichever is later, submit a brief or statement limited to explaining why the appeal or motion does or does not meet the criteria for three-member review under § 1003.1(e)(6).

[61 FR 18906, Apr. 29, 1996, as amended at 66 FR 6445, Jan. 22, 2001; 67 FR 54904, Aug. 26, 2002]

§ 1003.4 Withdrawal of appeal.

In any case in which an appeal has been taken, the party taking the appeal may file a written withdrawal thereof with the office at which the notice of appeal was filed. If the record in the case has not been forwarded to the Board on appeal in accordance with § 1003.5, the decision made in the case shall be final to the same extent as if no appeal had been taken. If the record has been forwarded on appeal, the withdrawal of the appeal shall be forwarded to the Board and, if no decision in the case has been made on the appeal, the record shall be returned and the initial decision shall be final to the same extent as if no appeal had been taken. If a decision on the appeal has been made by the Board in the case, further action shall be taken in accordance therewith. Departure from the United States of a person who is the subject of deportation proceedings subsequent to the taking of an appeal, but prior to a decision thereon, shall constitute a withdrawal of the appeal, and the initial decision in the case shall be final to the same extent as though no appeal had been taken. Departure from the United

States of a person who is the subject of deportation or removal proceedings, except for arriving aliens as defined in § 1001.1(q) of this chapter, subsequent to the taking of an appeal, but prior to a decision thereon, shall constitute a withdrawal of the appeal, and the initial decision in the case shall be final to the same extent as though no appeal had been taken.

[61 FR 18907, Apr. 29, 1996, as amended at 62 FR 10331, Mar. 6, 1997]

§ 1003.5 Forwarding of record on appeal.

(a) *Appeal from decision of an immigration judge.* If an appeal is taken from a decision of an immigration judge, the record of proceeding shall be forwarded to the Board upon the request or the order of the Board. Where transcription of an oral decision is required, the immigration judge shall review the transcript and approve the decision within 14 days of receipt, or within 7 days after the immigration judge returns to his or her duty station if the immigration judge was on leave or detailed to another location. The Chairman and the Chief Immigration Judge shall determine the most effective and expeditious way to transcribe proceedings before the immigration judges, and take such steps as necessary to reduce the time required to produce transcripts of those proceedings and improve their quality.

(b) *Appeal from decision of a Service officer.* If an appeal is taken from a decision of a Service officer, the record of proceeding shall be forwarded to the Board by the Service officer promptly upon receipt of the briefs of the parties, or upon expiration of the time allowed for the submission of such briefs. A Service officer need not forward such an appeal to the Board, but may reopen and reconsider any decision made by the officer if the new decision will grant the benefit that has been requested in the appeal. The new decision must be served on the appealing party within 45 days of receipt of any briefs or upon expiration of the time allowed for the submission of any briefs. If the new decision is not served within these time limits or the appealing party does not agree that the new decision disposes of the matter, the record of pro-

ceeding shall be immediately forwarded to the Board.

[61 FR 18907, Apr. 29, 1996, as amended at 67 FR 54905, Aug. 26, 2002]

§ 1003.6 Stay of execution of decision.

(a) Except as provided under § 236.1 of this chapter, § 1003.19(i), and paragraph (b) of this section, the decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed, nor shall such decision be executed while an appeal is pending or while a case is before the Board by way of certification.

(b) The provisions of paragraph (a) of this section shall not apply to an order of an Immigration Judge under § 1003.23 or § 242.22 of 8 CFR chapter I denying a motion to reopen or reconsider or to stay deportation, except where such order expressly grants a stay or where the motion was filed pursuant to the provisions of § 1003.23(b)(4)(iii). The Board may, in its discretion, stay deportation while an appeal is pending from any such order if no stay has been granted by the Immigration Judge or a Service officer.

(c) The following procedures shall be applicable with respect to custody appeals in which DHS has invoked an automatic stay pursuant to 8 CFR 1003.19(i)(2).

(1) The stay shall lapse if DHS fails to file a notice of appeal with the Board within ten business days of the issuance of the order of the immigration judge. DHS should identify the appeal as an automatic stay case. To preserve the automatic stay, the attorney for DHS shall file with the notice of appeal a certification by a senior legal official that—

(i) The official has approved the filing of the notice of appeal according to review procedures established by DHS; and

(ii) The official is satisfied that the contentions justifying the continued detention of the alien have evidentiary support, and the legal arguments are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing

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precedent or the establishment of new precedent.

(2) The immigration judge shall prepare a written decision explaining the custody determination within five business days after the immigration judge is advised that DHS has filed a notice of appeal, or, with the approval of the Board in exigent circumstances, as soon as practicable thereafter (not to exceed five additional business days). The immigration court shall prepare and submit the record of proceedings without delay.

(3) The Board will track the progress of each custody appeal which is subject to an automatic stay in order to avoid unnecessary delays in completing the record for decision. Each order issued by the Board should identify the appeal as an automatic stay case. The Board shall notify the parties in a timely manner of the date the automatic stay is scheduled to expire.

(4) If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal. However, if the Board grants a motion by the alien for an enlargement of the 21-day briefing schedule provided in §1003.3(c), the Board's order shall also toll the 90-day period of the automatic stay for the same number of days.

(5) DHS may seek a discretionary stay pursuant to 8 CFR 1003.19(i)(1) to stay the immigration judge's order in the event the Board does not issue a decision on the custody appeal within the period of the automatic stay. DHS may submit a motion for discretionary stay at any time after the filing of its notice of appeal of the custody decision, and at a reasonable time before the expiration of the period of the automatic stay, and the motion may incorporate by reference the arguments presented in its brief in support of the need for continued detention of the alien during the pendency of the removal proceedings. If DHS has submitted such a motion and the Board is unable to resolve the custody appeal within the period of the automatic stay, the Board will issue an order granting or denying a motion for discretionary stay pending its decision on the custody appeal. The Board shall issue guidance to ensure prompt adju-

dication of motions for discretionary stays. If the Board fails to adjudicate a previously-filed stay motion by the end of the 90-day period, the stay will remain in effect (but not more than 30 days) during the time it takes for the Board to decide whether or not to grant a discretionary stay.

(d) If the Board authorizes an alien's release (on bond or otherwise), denies a motion for discretionary stay, or fails to act on such a motion before the automatic stay period expires, the alien's release shall be automatically stayed for five business days. If, within that five-day period, the Secretary of Homeland Security or other designated official refers the custody case to the Attorney General pursuant to 8 CFR 1003.1(h)(1), the alien's release shall continue to be stayed pending the Attorney General's consideration of the case. The automatic stay will expire 15 business days after the case is referred to the Attorney General. DHS may submit a motion and proposed order for a discretionary stay in connection with referring the case to the Attorney General. For purposes of this paragraph and 8 CFR 1003.1(h)(1), decisions of the Board shall include those cases where the Board fails to act on a motion for discretionary stay. The Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board.

[61 FR 18907, Apr. 29, 1996; 61 FR 21065, May 9, 1996, as amended at 63 FR 27448, May 19, 1998; 71 FR 57884, Oct. 2, 2006]

§ 1003.7 Notice of certification.

Whenever, in accordance with the provisions of §1003.1(c), a case is certified to the Board, the alien or other party affected shall be given notice of certification. An Immigration Judge or Service officer may certify a case only after an initial decision has been made and before an appeal has been taken. If it is known at the time the initial decision is rendered that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be required. If it is not known until after the initial decision is rendered that the case will be certified, the office of the Service or the Immigration

Court having administrative control over the record of proceeding shall cause a Notice of Certification to be served upon the parties. In either case, the notice shall inform the parties that the case is required to be certified to the Board and that they have the right to make representations before the Board, including the making of a request for oral argument and the submission of a brief. If either party desires to submit a brief, it shall be submitted to the office of the Service or the Immigration Court having administrative control over the record of proceeding for transmittal to the Board within the time prescribed in § 1003.3(c). The case shall be certified and forwarded to the Board by the office of the Service or Immigration Court having administrative jurisdiction over the case upon receipt of the brief, or upon the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief. The Board in its discretion may elect to accept for review or not accept for review any such certified case. If the Board declines to accept a certified case for review, the underlying decision shall become final on the date the Board declined to accept the case.

[61 FR 18907, Apr. 29, 1996]

§ 1003.8 Fees before the Board.

(a) *Appeals and motions before the Board*—(1) *When a fee is required.* Except as provided in paragraph (a)(2) of this section, a filing fee prescribed in 8 CFR 1103.7, or a fee waiver request pursuant to paragraph (a)(3) of this section, is required in connection with the filing of an appeal, a motion to reopen, or a motion to reconsider before the Board.

(2) *When a fee is not required.* A filing fee is not required in the following instances:

(i) A custody bond appeal filed pursuant to § 1003.1(b)(7);

(ii) A motion to reopen that is based exclusively on an application for relief that does not require a fee;

(iii) A motion to reconsider that is based exclusively on a prior application for relief that did not require a fee;

(iv) A motion filed while an appeal, a motion to reopen, or a motion to re-

consider is already pending before the Board;

(v) A motion requesting only a stay of removal, deportation, or exclusion;

(vi) Any appeal or motion filed by the Department of Homeland Security;

(vii) A motion that is agreed upon by all parties and is jointly filed; or

(viii) An appeal or motion filed under a law, regulation, or directive that specifically does not require a filing fee.

(3) *When a fee may be waived.* The Board has the discretion to waive a fee for an appeal, motion to reconsider, or motion to reopen upon a showing that the filing party is unable to pay the fee. Fee waivers shall be requested through the filing of a Fee Waiver Request (Form EOIR-26A), including the declaration to be signed under penalty of perjury substantiating the filing party's inability to pay the fee. The fee waiver request shall be filed along with the Notice of Appeal or the motion. If the fee waiver request does not establish the inability to pay the required fee, the appeal or motion will not be deemed properly filed.

(4) *Method of payment.* When a fee is required for an appeal or motion, the fee shall accompany the appeal or motion.

(i) *In general.* Except as provided in paragraph (a)(4)(ii) of this section, the fee for filing an appeal or motion with the Board shall be paid by check, money order, or electronic payment in a manner and form authorized by the Executive Office for Immigration Review. When paid by check or money order, the fee shall be payable to the "United States Department of Justice," drawn on a bank or other institution that is located within the United States, and payable in United States currency. The check or money order shall bear the full name and alien registration number of the alien. A payment that is uncollectible does not satisfy a fee requirement.

(ii) *Appeals from Department of Homeland Security decisions.* The fee for filing an appeal, within the jurisdiction of the Board, from the decision of a Department of Homeland Security officer shall be paid to the Department of Homeland Security in accordance with 8 CFR 103.7(a).

(b) *Applications for relief.* Fees for applications for relief are not collected by the Board, but instead are paid to the Department of Homeland Security in accordance with 8 CFR 103.7. When a motion before the Board is based upon an application for relief, only the fee for the motion to reopen shall be paid to the Board, and payment of the fee for the application for relief shall not accompany the motion. If the motion is granted and proceedings are remanded to the immigration judge, the application fee shall be paid in the manner specified in 8 CFR 1003.24(c)(1).

[69 FR 44906, July 28, 2004]

Subpart B—Office of the Chief Immigration Judge

SOURCE: 62 FR 10331, Mar. 6, 1997, unless otherwise noted.

§ 1003.9 Office of the Chief Immigration Judge.

(a) *Organization.* Within the Executive Office for Immigration Review, there shall be an Office of the Chief Immigration Judge (OCIJ), consisting of the Chief Immigration Judge, the immigration judges, and such other staff as the Director deems necessary. The Attorney General shall appoint the Chief Immigration Judge. The Director may designate immigration judges to serve as Deputy and Assistant Chief Immigration Judges as may be necessary to assist the Chief Immigration Judge in the management of the OCIJ.

(b) *Powers of the Chief Immigration Judge.* Subject to the supervision of the Director, the Chief Immigration Judge shall be responsible for the supervision, direction, and scheduling of the immigration judges in the conduct of the hearings and duties assigned to them. The Chief Immigration Judge shall have the authority to:

(1) Issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(2) Provide for appropriate training of the immigration judges and other OCIJ staff on the conduct of their powers and duties;

(3) Direct the conduct of all employees assigned to OCIJ to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases, to direct that the adjudication of certain cases be deferred, to regulate the assignment of immigration judges to cases, and otherwise to manage the docket of matters to be decided by the immigration judges;

(4) Evaluate the performance of the Immigration Courts and other OCIJ activities by making appropriate reports and inspections, and take corrective action where needed;

(5) Adjudicate cases as an immigration judge; and

(6) Exercise such other authorities as the Director may provide.

(c) *Limit on the Authority of the Chief Immigration Judge.* The Chief Immigration Judge shall have no authority to direct the result of an adjudication assigned to another immigration judge, provided, however, that nothing in this part shall be construed to limit the authority of the Chief Immigration Judge in paragraph (b) of this section.

(d) *Immigration Court.* The term Immigration Court shall refer to the local sites of the OCIJ where proceedings are held before immigration judges and where the records of those proceedings are created and maintained.

[72 FR 53677, Sept. 20, 2007]

§ 1003.10 Immigration judges.

(a) *Appointment.* The immigration judges are attorneys whom the Attorney General appoints as administrative judges within the Office of the Chief Immigration Judge to conduct specified classes of proceedings, including hearings under section 240 of the Act. Immigration judges shall act as the Attorney General's delegates in the cases that come before them.

(b) *Powers and duties.* In conducting hearings under section 240 of the Act and such other proceedings the Attorney General may assign to them, immigration judges shall exercise the powers and duties delegated to them by the Act and by the Attorney General through regulation. In deciding the individual cases before them, and subject to the applicable governing standards,